2

3

4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES

6

7

8 *Ex parte* GEORGE LIKOUREZOS and MICHAEL A. SCATURRO

9

10

11 Appeal 2007-2742
12 Application 09/764,618
13 Technology Center 3600

14

15

16 Decided: August 22, 2007

17

18

19 Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and ANTON W.
20 FETTING, *Administrative Patent Judges.*

21 FETTING, *Administrative Patent Judge.*

22

23

24 DECISION ON APPEAL

25 STATEMENT OF CASE

26 George Likourezos and Michael A. Scaturro (Appellants) seek review under

27 35 U.S.C. § 134 of a Final Rejection of claims 1-31, the only claims pending in the

28 application on appeal.

29 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

30

31 We AFFIRM.

1   The Appellants invented a computerized electronic auction payment system for

2   real-time payment for an item won on an electronic auction, where users access the

3   computerized electronic auction payment system by remote terminals via an

4   electronic network, such as the Internet (Specification 1:4-8).

5   An understanding of the invention can be derived from a reading of exemplary

6   claim 1, which is reproduced below [bracketed matter and some paragraphing

7   added].

8   1. A method

9   for effecting payment for a purchaser of at least one item

10   offered for an electronic auction sale by a seller

11   via an electronic auction web site

12   maintained by at least one computing device of an electronic
13   auction system,

14   said method comprising the steps of:

15   [1] maintaining

16   [a] a database of a plurality of electronic auction payment
17   accounts

18   [i] corresponding to a plurality of users, including the
19   purchaser, of said electronic auction web site and

20   [b] a payment segment of said electronic auction web site

21   [2] by an electronic auction payment system

22   [a] integrated with said electronic auction system,

23   [b] each of said plurality of electronic auction payment
24   accounts configured for storing funds therein and

25   [c] each capable of being used for user transactions in the
26   electronic auction system;

27   [3] performing at least one payment-related activity

28   [a] by said electronic auction payment system for effecting
29   payment for said purchaser,

1   [4] said at least one payment-related activity selected from the group
2   consisting of

3   [a] debiting an electronic auction payment account

4   [i] corresponding to the purchaser of the at least one item
5   and maintained by said electronic auction payment
6   system, and

7   [b] withdrawing funds from at least one account storing funds
8   therein and

9   [i] not corresponding to at least one of the plurality of
10   users; and

11   [5] crediting at least one account

12   [a] corresponding to the seller

13   [b] to effect payment for the at least one item offered for the
14   electronic auction sale via the electronic auction web site.

15

16   This appeal arises from the Examiner's Final Rejection, mailed May 6, 2005.

17   The Appellants filed an Appeal Brief in support of the appeal on August 14, 2006,

18   and an Examiner's Answer to the Appeal Brief was mailed on October 11, 2006.

19   PRIOR ART

20   The Examiner relies upon the following prior art:

21 Hambrecht	US 6,629,082 B1	Sep. 30, 2003
22 Bogosian	US 6,760,470 B1	Jul. 6, 2004

23

24   REJECTIONS

25   Claims 1-31 stand rejected under 35 U.S.C. § 103(a) as unpatentable over

26   Bogosian and Hambrecht.

27

1 ## ISSUES

2 The issue pertinent to this appeal is whether the Appellants have sustained their

3 burden of showing that the Examiner erred in rejecting claims 1-31 under 35

4 U.S.C. § 103(a) as unpatentable over Bogosian and Hambrecht.

5 ## FACTS PERTINENT TO THE ISSUES

6 The following enumerated Findings of Fact (FF) are believed to be supported

7 by a preponderance of the evidence.

8 *Claim Construction*

9 01. The Specification contains no lexicographic definitions for the term

10 "fund" or "funds."

11 02. The usual and ordinary meaning of fund or funds is (1) a source of

12 supply; (2) a sum of money or other resources set aside for a specific

13 purpose; or (3) funds - available money; ready cash.[1]

14 03. The Specification contains no lexicographic definitions for the term

15 "account."

16 04. The usual and ordinary meaning of "account" within the financial

17 context of the claim is (1) a formal banking, brokerage, or business

18 relationship established to provide for regular services, dealings, and

19 other financial transactions; (2) a precise list or enumeration of financial

20 transactions; (3) money deposited for checking, savings, or brokerage

21 use; or (4) a customer having a business or credit relationship with a

22 firm[1].

---

[1] *American Heritage Dictionary of the English Language* (4th ed. 2000).

1   05.   The Specification contains no lexicographic definitions for the term

2   "automatically" or "automatic."

3   06.   The usual and ordinary meaning of "automatic" within the context of

4   claim 1 is acting or operating in a manner essentially independent of

5   external influence or control[1].

6   *Bogosian*

7   07.   Bogosian is directed towards extracting a user's bank account

8   information for the electronic transfer of funds, for example, as an

9   alternative to requiring users to send a voided check to the entity

10   initiating the transfer. Bogosian describes various ways for facilitating

11   transfers of funds between a buyer and a seller for users to sell items to

12   other users (Bogosian, col. 2, ll. 10-21.)

13   08.   Bogosian describes a way to transfer funds between a buyer and a

14   seller in an online auction system, an online flea market system, or

15   another type of system in which a user can sell items to other users. The

16   seller is prompted to enter information from the face of a bank check

17   issued from the seller's bank account. A credit card account associated

18   with the buyer is then charged to collect funds for purchasing items from

19   the seller, and the collected funds are deposited electronically into the

20   seller's bank account using the bank routing number and account number

21   (Bogosian, col. 2, ll. 48-51).

22   09.   Bogosian provides buyers the option to immediately purchase items

23   from such sellers using a default credit card number and shipping

24   address previously specified by the buyer (Bogosian, col. 2, ll. 64-67).

1   10.   Bogosian's actions described as being performed by Amazon.com, or

2   by the web site operator, are performed automatically by executable

3   components of the web site system (Bogosian, col. 4, ll. 19-22).

4   11.   Bogosian describes a host web site that includes a web server that

5   processes user requests via a network, such as the Internet. The host web

6   site includes a database that includes among other things, product

7   information pages, and includes a catalog server that provides a forum

8   for third party sellers to advertise and sell products. The catalog server

9   includes a transaction facility that receives purchase requests from

10   buyers, and a catalog database containing information about the third

11   party sellers and their associated products (Bogosian, col. 4, ll. 23-39).

12   12.   The sales handled by the catalog server may be via auctions, via

13   fixed-price marketplaces (i.e., online "flea markets"), or via any other

14   method using third party sellers (Bogosian, col. 4, ll. 39-42).

15   13.   Following registration, a seller can post information about items that

16   are for sale. In an Amazon.com implementation, the seller can select

17   between an Auctions option and a zShops (fixed price) option when

18   posting an item for sale. If the user has registered to use Amazon.com

19   Payments, the posted items are preferably displayed on the web site

20   together with a "1-Click Ready" slogan or an associated icon to indicate

21   to buyers that the seller accepts Amazon.com Payments, and that such

22   payments can optionally be made using the site's 1-Click service

23   (Bogosian, col. 5, ll. 17-27).

1   14. A preferred embodiment of the 1-Click service is set forth in U.S. Pat.

2   No. 5,960,411, which is incorporated into Bogosian by reference

3   (Bogosian, col. 5, ll. 27-29).

4   15. Once a buyer in Bogosian selects an item for purchase or wins an

5   auction for the item, the transaction facility obtains the buyer's credit

6   card and shipping information (Bogosian, col. 5, ll. 41-44).

7   16. If Bogosian's buyer has set up and enabled 1-Click settings, the credit

8   card and shipping information are extracted automatically from such

9   settings; otherwise, the buyer is preferably prompted to specify the

10   information (Bogosian, col. 5, ll. 44-47).

11 17. Bogosian's transaction facility then charges the buyer's credit card and

12   calculates a commission to be retained by the web site operator. In

13   addition, the transaction facility forwards the transaction information to

14   the electronic fund transfer application, which deposits the purchase

15   price amount (minus the commission) into the seller's bank checking

16   account. Finally, the transaction facility instructs the seller by email to

17   ship the product to the buyer (Bogosian, col. 5, ll. 47-55).

18 18. Bogosian's sellers who advertise and sell products via online auctions

19   or online flea markets typically do not have a preexisting relationship

20   with those who purchase their products. As such, a seller generally will

21   not ship the purchased product until he or she has received payment in

22   full. Once the host web site has stored the bank routing number and

23   bank account number for a particular seller in the user bank account

24   database, that user immediately receives payment for any goods sold via

25   the host web site, without any need for the buyer and seller to contact

1   one another. Further, in the preferred embodiment, buyers that use the

2   1-Click service can purchase an item from the seller with a single mouse

3   click or other single action (Bogosian, col. 12, ll. 46-59).

4   19. Bogosian's purchase page includes a purchase button that buyers may

5   select to purchase the advertised book. A "1-Click Ready" message

6   informs the buyer that the seller accepts Amazon.Com Payments. This

7   informs the buyer that the seller will be compensated immediately for

8   the transaction once it is finalized by the buyer, thus avoiding the delay

9   that occurs when a seller waits for a check in the mail. If the buyer has

10   enabled the 1-Click service, the page may optionally include a button,

11   link, or other control for buying the item with a single action (Bogosian,

12   col. 13, ll. 11-21).

13   20. Bogosian illustrates a sample order confirmation page displayed when

14   the buyer selects the purchase button on the purchase page. *The display*

15   *of the confirmation page may optionally be omitted if 1-Click purchasing*

16   *is used.* The confirmation page repeats the book title, the buyer-

17   identifier, and purchase price, and displays a shipping fee and a quantity

18   of books ordered. The order confirmation page further includes a

19   confirmation button that buyers may select to confirm their purchase of

20   the advertised book (Bogosian, col. 13, ll. 38-47).

21   21. In another embodiment, upon winning an auction or buying a fixed-

22   price item, an email is sent to the buyer with a link to an Amazon.com

23   Payments web page. If the buyer has enabled the 1-Click service, this

24   page includes a button for paying immediately with the buyer's 1-Click

1 settings; otherwise, the user is prompted to specify payment and

2 shipping information (Bogosian, col. 13, l. 64 – col. 14, l. 3).

3 *Hambrecht*

4 22. Hambrecht is directed towards an underwriting process. By re-

5 thinking accepted underwriting practices, it levels the playing field for

6 pricing and allocating equity securities. Unlike the traditional method of

7 allowing entities such as investment bankers to negotiate the offering

8 price, Hambrecht employs a mathematical model that lets the market set

9 a share price that is optimal for both the company and the purchasers of

10 shares of stock in the company. The result is a price that eliminates

11 traditional fixed discounts and better reflects what the market is truly

12 willing to pay for the stock (Hambrecht, col. 1, ll. 17-29).

13 23. One embodiment of Hambrecht has an underwriter set an initial price

14 range for the shares, then, any investor (whether institutional or retail)

15 who is interested in the offering can place a bid in an auction through an

16 internet website. Once the auction is closed, the auction system

17 calculates a fair market clearing priced (Hambrecht, col. 1, ll. 32-39).

18 24. Hambrecht allows nonqualified individual investors to enter bids

19 through a broker. The broker gains a reallowance on the trade and

20 ensures there is sufficient funding in the brokerage account to cover the

21 transaction. Some professional investors may wish to route bids through

22 their brokerage accounts via telephone or dedicated terminals while

23 others may wish to enter bids directly over the Internet and settle

24 transactions through an existing account. For direct bidders,

25 Hambrecht's system may require a mechanism to ensure that there are

1   sufficient funds in the account to settle the transaction (Hambrecht, col.

2   8, ll. 34-51).

3   25.   Brokers have the capacity to lend funds on margin.

4   26.   Hambrecht's claim 36 describes permitting extension of credit to a

5   qualified purchaser (Hambrecht, col. 37, ll. 10-11).

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, pending claims are given
their broadest reasonable construction consistent with the specification. *In
re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969);
In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1369, 70 USPQ2d 1827,
1834 (Fed. Cir. 2004).

Although a patent applicant is entitled to be his or her own lexicographer of
patent claim terms, in *ex parte* prosecution it must be within limits. *In re Corr*,
347 F.2d 578, 580, 146 USPQ 69, 70 (CCPA 1965). The applicant must do so by
placing such definitions in the Specification with sufficient clarity to provide a
person of ordinary skill in the art with clear and precise notice of the meaning that
is to be construed. *See also In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671,
1674 (Fed. Cir. 1994) (although an inventor is free to define the specific terms
used to describe the invention, this must be done with reasonable clarity,
deliberateness, and precision; where an inventor chooses to give terms uncommon
meanings, the inventor must set out any uncommon definition in some manner
within the patent disclosure so as to give one of ordinary skill in the art notice of
the change).

1 *Obviousness*

2   A claimed invention is unpatentable if the differences between it and the

3 prior art are "such that the subject matter as a whole would have been obvious at

4 the time the invention was made to a person having ordinary skill in the art." 35

5 U.S.C. § 103(a) (2000); *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d

6 1385 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14, 148 USPQ 459, 465

7 (1966).

8   In *Graham*, the Court held that that the obviousness analysis is bottomed on

9 several basic factual inquiries: "[(1)] the scope and content of the prior art are to be

10 determined; [(2)] differences between the prior art and the claims at issue are to be

11 ascertained; and [(3)] the level of ordinary skill in the pertinent art resolved." 383

12 U.S. at 17, 148 USPQ at 467. *See also KSR Int'l v. Teleflex Inc.*, 127 S.Ct. at 1734

13 82 USPQ2d at 1391. "The combination of familiar elements according to known

14 methods is likely to be obvious when it does no more than yield predictable

15 results." *KSR*, at 1739, 82 USPQ2d at 1395.

16   "When a work is available in one field of endeavor, design incentives and

17 other market forces can prompt variations of it, either in the same field or [in] a

18 different one. If a person of ordinary skill [in the art] can implement a predictable

19 variation, § 103 likely bars its patentability." *Id*. at 1740, 82 USPQ2d at 1396.

20   "For the same reason, if a technique has been used to improve one device,

21 and a person of ordinary skill in the art would recognize that it would improve

22 similar devices in the same way, using the technique is obvious unless its actual

23 application is beyond his or her skill." *Id*.

24   "Under the correct analysis, any need or problem known in the field of

25 endeavor at the time of invention and addressed by the patent can provide a reason

1   for combining the elements in the manner claimed." *Id.* at 1742, 82 USPQ2d at

2   1397.

3   *Automation of a Known Process*

4   It is generally obvious to automate a known manual procedure or mechanical

5   device. Our reviewing court stated in *Leapfrog Enterprises Inc. v. Fisher-Price*

6   *Inc.*, 485 F.3d 1157, 82 USPQ2d 1687 (Fed. Cir. 2007) that one of ordinary skill in

7   the art would have found it obvious to combine an old electromechanical device

8   with electronic circuitry "to update it using modern electronic components in order

9   to gain the commonly understood benefits of such adaptation, such as decreased

10   size, increased reliability, simplified operation, and reduced cost. . . . The

11   combination is thus the adaptation of an old idea or invention . . . using newer

12   technology that is commonly available and understood in the art." *Id.* at 1162, 82

13   USPQ2d 1691.

14

15   ANALYSIS

16   *Claims 1-31 rejected under 35 U.S.C. § 103(a) as unpatentable over Bogosian and*

17   *Hambrecht.*

18   The Appellants contend that, apart from the lack of certain claim elements

19   being found in the applied art, that Bogosian and Hambrecht cannot be combined

20   because Hambrecht is not analogous art. Both Bogosian and Hambrecht are

21   directed towards transactions in an auction format that require payment following

22   the auction. Thus, both are directed towards the field of auction sales endeavors

23   generally and each solves problems that are useful to the other.

1 "When a work is available in one field of endeavor, design incentives and other

2 market forces can prompt variations of it, either in the same field or [in] a different

3 one. If a person of ordinary skill [in the art] can implement a predictable variation,

4 § 103 likely bars its patentability." (*See KSR, id.*). Hambrecht describes payment

5 mechanisms that are useful in an auction process (FF 22-23). The incentives for

6 collecting auction receipts exist in both Hambrecht and Bogosian, and are

7 comparable. The use of credit in all commercial transactions is so pervasive as to

8 be readily predictable. We find these incentives would have prompted the

9 predictable variation of Hambrecht's use of credit within Bogosian.

10 The Appellants also contend that, as to claims 21, 28, and 30, the Examiner has

11 failed to describe what portion of the claims is missing from Bogosian in a

12 rejection under obviousness. The argument appears to be essentially that the

13 format of the rejection is improper by not explicitly reciting the differences

14 between the claims and Bogosian. Our reviewing court has held that "anticipation

15 is the epitome of obviousness," *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542,

16 1548, 220 USPQ 193, 198 (Fed. Cir. 1983). Thus, the Examiner's findings within

17 Bogosian alone are sufficient to support a *prima facie* case of anticipation or

18 obviousness.

19 *Independent Claim 1*

20 The Appellants argue claims 1-20 as a group.

21 Accordingly, we select claim 1 as representative of the group.

22 37 C.F.R. § 41.37(c)(1)(vii) (2006).

23 The Examiner found that Bogosian described all of the elements of claim 1

24 except element [4.b.i.] withdrawing funds from an account not corresponding to at

25 least one of the plurality of users (Answer 3:Last full ¶ - 4:First full ¶). To

1   overcome this deficiency, the Examiner found that Hambrecht described an auction

2   of financial instruments in which professional investors have to route bids and

3   payments through brokers, the brokers not being users of Hambrecht's system.

4   The Examiner concluded that it would have been obvious to a person of ordinary

5   skill in the art to have routed payments to Bogosian in a similar manner to take

6   advantage of existing credit accounts (Answer 4:Second and third ¶'s).

7   The Appellants contend that Hambrecht fails to describe settling transactions

8   by effecting payment after the sale; that one cannot reasonably conclude from

9   Hambrecht, that the brokerage account used to cover the transaction is used to

10 withdraw funds for performing a payment-related activity for effecting payment;

11 and that Hambrecht fails to describe that the existing account corresponds to an

12 individual who is not a user of the online web site (Br. 14:Bottom ¶ - 15:Top of

13 page).

14 The Examiner found that Bogosian describes performance of element [4.a.].

15 Element [4] requires that only one of the activities [4.a.] or [4.b.] be performed.

16 We find that the Appellants have not contended that Bogosian fails to describe

17 element [4.a.]. Thus, it is immaterial whether Hambrecht describes the

18 performance of [4.b.] to the rejection.

19 The Appellants have not sustained their burden of showing that the Examiner

20 erred in rejecting claims 1-20.

21 *Independent Claim 21*

22 The Appellants argue claims 21-23 as a group. Accordingly, we select claim

23 21 as representative of the group.

1   Appellants separately argue claim 21, which recites "a plurality of electronic

2   auction payment accounts ... configured for storing funds therein ... [and]

3   automatically effecting payment to the seller by accessing the database and

4   debiting the electronic auction payment account corresponding to the winning

5   bidder of the at least one item and crediting at least one account corresponding to

6   the seller without any intervention by the winning bidder following the conclusion

7   of the electronic auction...."

8   The Examiner found that Bogosian describes all of the elements of claim 21

9   (Answer 13:Bottom ¶ - 14:Top ¶).

10   The Appellants contend that Bogosian and Hambrecht do not disclose or

11   suggest the above set of limitations in claim 21. The Appellants explain that

12   Bogosian's description of requiring manual action (Br. 20:Second to last ¶) and

13   charging a user's credit card for effecting payment (Br. 20:Last ¶) is counter to

14   such automatic payment as claimed.

15   Bogosian describes several implementations of the purchase function. Several

16   embodiments do require manual action, and the Appellants rely on these

17   embodiments to support their position. Bogosian also describes alternative

18   embodiments using Amazon's 1-click service that requires no manual action other

19   than selecting the item to purchase or bid on (FF 15-20). How Amazon 1-click

20   accomplishes these purchase operations are described in U.S. Pat. No. 5,960,411,

21   which Bogosian wholly incorporates by reference (FF 14). Thus, the payment

22   process of Bogosian that employs the Amazon 1-click embodiment requires no

23   manual action.

1   Thus, the Appellants have not sustained their burden of showing that

2   Bogosian fails to describe an automatic payment method after the conclusion of the

3   electronic auction.

4   The Appellants' second argument is that the reliance on a credit card to pay the

5   seller fails to anticipate automated deduction of funds from a payment account and

6   transference to a user (seller) account. The Appellants' explanation linking this

7   operation to the claimed plurality of payment accounts appears to argue that the

8   customer has not transferred a cash balance into the auctioneer's payment

9   accounts, from which payments are transferred to sellers (Br. 20:Bottom ¶ - 21:Top

10   line).

11   We find that claim 21 is broader than such a narrow construction. As we

12   construed above, an account is a record of a customer having a business or credit

13   relationship. Therefore a payment account is such a record that is used to record

14   payments by a customer. By the terms of claim 21, the payment accounts must be

15   maintained by the auction system and be capable of storing funds. Those

16   customers who sign up for using Amazon 1-click have payment accounts so

17   maintained (FF 16). Storing a credit card number inherently stores funds as

18   construed *supra*, a source of supply of money or other financial resource, and thus

19   is capable of storing funds.

20   As to the specific operations of debiting payor purchases accounts and

21   crediting payee sales accounts, we find that this is conventional in any accounting

22   system.

23   The Appellants have not sustained their burden of showing that the Examiner

24   erred in rejecting claims 21-23.

25   *Independent Claim 24*

1   The Appellants argue claims 24-27 as a group. Accordingly, we select claim

2   24 as representative of the group.

3   Appellants separately argue claim 24, which recites "determining if there are

4   sufficient funds in a payment account to effect payment, ...; debiting the payment

5   account corresponding to the user ..., if there are sufficient ...; and loaning funds

6   ..., if there are not sufficient ...."

7   The Examiner found that Bogosian describes all of the elements of claim 24

8   except the elements contended by the Appellants, *supra*. The Examiner found that

9   Hambrecht described these elements (Answer 14:Bottom ¶ - 16:Top ¶).

10   Here we revisit the issue that was originally raised in claim 1, but turned out to

11   be non-dispositive there. The Appellants contend that Hambrecht does not teach

12   that institutional investors can use credit to settle the transactions or that a direct

13   bidder with insufficient funds can submit a bid (Br. 15:First full ¶). They explain

14   that Hambrecht does not describe that payment is effected automatically by

15   determining if there are sufficient funds in a payment account to effect payment

16   and loaning funds if there are not sufficient funds (Br. 18:Bottom ¶ - 19:Top of

17   page).

18   Hambrecht's users who are able to access credit if needed may rely on a broker

19   to ensure there are adequate funds. Hambrecht performs a test to see whether there

20   are sufficient funds (FF 24). The broker may loan funds on margin if needed (FF

21   25). Hambrecht's claim 36 describes permitting extension of credit to a qualified

22   purchaser (FF 26). Thus, Hambrecht does test for sufficient funds and accepts a

23   margin loan from a broker if needed.

24   The Appellants have not sustained their burden of showing that the Examiner

25   erred in rejecting claims 24-27.

1 *Independent Claim 28*

2 Appellants separately argue claim 28, which recites a "plurality of accounts

3 being configured for storing funds therein ... [and] application software for

4 maintaining the plurality of accounts and for *periodically* effecting payment for the

5 at least one of the plurality of online auction registered users by debiting an

6 account of the plurality of accounts and crediting at least one account,..."

7 (emphasis added).

8 The Examiner found that Bogosian describes all of the elements of claim 28

9 (Answer 16:Bottom ¶ - 17:Top ¶).

10 The Appellants contend that Bogosian does not disclose or suggest the same

11 limitation above that was also in claim 21. We find that Bogosian does describe

12 that limitation for the same reasons we found for claim 1 and 21, *supra*.

13 The Appellants further argue that there is no disclosure or suggestion that the

14 system described by Hambrecht is for periodically effecting payment. The

15 Appellants provide dictionary definitions for the word "periodic" as (1) recurring

16 at intervals of time; (2) occurring or appearing at regular intervals; or (3) repeated

17 at irregular intervals; intermittent. The Appellants then state that "Bogosian et al.

18 at best suggests periodically effecting payment by a buyer at regular or irregular

19 intervals." (Br. 22:First and second full ¶'s.)

20 We find that, as the Appellants have admitted, Bogosian suggests periodically

21 effecting payment by a buyer according to at least one of the definitions set forth

22 by the Appellants.

23 The Appellants have not sustained their burden of showing that the Examiner

24 erred in rejecting claims 24-27.

1   *Independent Claim 30 and Dependent Claims 29 and 31*

2   Appellants separately argue claims 29-31. Claim 30 is a broader form of claim

3   21 and claims 29 and 31 each add the limitation of lack of intervention in payment

4   to claims 28 and 30 respectively. All of these limitations were contended in claims

5   21 and our findings as to those contentions are the same as we made in claims 1

6   and 21, *supra*.

7   The Appellants have not sustained their burden of showing that the Examiner

8   erred in rejecting claims 1-31 under 35 U.S.C. § 103(a) as unpatentable over

9   Bogosian and Hambrecht.

10

11   CONCLUSIONS OF LAW

12   The Appellants have not sustained their burden of showing that the Examiner

13   erred in rejecting claims 1-31 under 35 U.S.C. § 103(a) as unpatentable over the

14   prior art.

15   On this record, the Appellants are not entitled to a patent containing claims 1-

16   31.

1   DECISION

2   To summarize, our decision is as follows:

3   • The rejection of claims 1-31 under 35 U.S.C. § 103(a) as unpatentable over

4   Bogosian and Hambrecht is sustained.

5   No time period for taking any subsequent action in connection with this appeal

6 may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

7   **AFFIRMED**

8

9
10
11
12
13 hh

14

15 GEORGE LIKOUREZOS, ESQ.
16 261 WASHINGTON AVENUE
17 ST. JAMES, NY 11780